

Mohan Rai Vs. State of Bihar

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Court : Patna

Decided On : Apr-10-2009

Reported in : 2009CriLJ3255

Judge : Sheema Ali Khan, J.

Appellant : Mohan Rai

Respondent : State of Bihar

Disposition : Appeal allowed

Judgement :

Sheema Ali Khan, J.

1. This is a jail appeal in which this Court has appointed Arun Kumar Tripathy to appear Amicus curiae.
2. The sole appellant Mohan Rai who has spent about more than six years in jail custody in a case under Section 366A of the Indian Penal Code has challenged the order dated 11-8-2004 passed by District and Sessions Judge, Buxar.
3. The prosecution case is that the occurrence took place 2 1/2 years prior to the lodging of the First Information Report. The First Information Report was lodged on 19-10-2000 by Urmila Devi, mother of the so called victim girl Dharmshila Devi. In the First Information Report it is alleged that Anandi Devi, mother of the present

appellant had come to the house of the informant in the morning at about 3 a.m. and asked Dharmshila Devi to accompany her for the purpose of attending the call of nature. The informant found that her daughter had not returned home and began to look for her. She went to the house of Anandi Devi but was told that Anandi Devi does not know the whereabouts of Dharmshila Devi. In the First Information Report it is also alleged that the informant went again to the house of Anandi Devi but on each and every occasion she was repelled by her. The informant claims that there was a 'Panchayati' in the village and Anandi Devi had promised to produce the girl who has allegedly been taken away by Mohan Rai, son of Anandi Devi. The girl returned after about 8 or 9 months of the occurrence.

4. Eight (8) witnesses have been examined on behalf of the informant whereas three (3) witnesses have been examined on behalf of the defence. The Court below has convicted Mohan Rai on the evidence of the girl and her mother and had believed the prosecution version.

5. Further the case of the prosecution that some boys of the village had caught hold of Mohan Rai and got him to confess with regard to the whereabouts of Dharmshila Devi. It is said that the informant's husband and Mohan Rai along with some villagers went with Mohan Rai to Sasaram to look for Dharmshila Devi. After reaching Sasaram, it is alleged that Mohan Rai managed to escape from them on the pretext of fetching water.

6. P.W. 1 Jai Prakash Rai has given evidence only on the point that he went to Sasaram with Mohan Rai, P.W. 2 has been declared hostile. P.Ws. 3 and 4 have been tendered for cross-examination. The only relevant evidence in this case is of P.Ws. 5 and 7. P.W. 6, the husband of the informant and his evidence is mainly based on what he has learnt from his wife, the informant.

7. P.W. 5 Urmila Devi, the informant has supported the case made out in the First Information Report. In the cross-examination she has not been able to explain as to why her daughter went to attend the call of nature with Anandi Devi when she herself was present in the house as according to the informant she was sleeping in her house along with her daughter Dharmshila Devi. Secondly, when the Court asked her how she came to know that her daughter had gone to Panipat she said

that she had come to know all these facts from her daughter. In fact the evidence in her cross-examination is so weak with respect to the manner of occurrence and the explanation, rather virtually no explanation has come forth to explain the delay in filing the case for 21/2 years, although she was aware that her daughter had been kidnapped.

8. Similarly, P.W. 7 the victim girl has tried to make out a case that she was forcibly taken and that Anandi Devi handed her over to Mohan Rai at 3 a.m. after she left her house. This witness is not at all able to explain as to how she left from Sasaram and went to Panipat on a truck. The first inconsistency in her statement comes forth when she states that Mohan Rai had taken her on a bus to Sasaram, she admits that there were several passengers travelling on the bus and she has not raised hue and cry or protested or informed the passenger, driver or khalasi regarding the fact that she was being forcefully taken on the bus. The initial story of kidnapping becomes doubtful in view of this fact. It is not her case that she was in an unconscious condition and was thus unable to protest or make noise while she was taken to the bus stand at 6 a.m. in the morning to leave for Sasaram. Another inconsistency of the prosecution version is that P.W. 7 does not give an explanation as to what transpired between 3 a.m. (time when she was kidnapped) and 6 a.m. (time when she boarded the bus to leave for Sasaram). It is strange still that none of the villagers have seen Mohan Rai along with Dharmshila Devi anywhere in the village. This story put forth by Dharmshila Devi appears to be doubtful and improbable.

9. The second part of the prosecution case put forth by Dharmshila Devi is that she was sold to one Krishna the owner of a truck who took her to Panipat. It is said that she travelled for three days on a truck with Krishna. According to the informant apart from Krishna there was no Khalasi or any other person travelling on the truck with them which in itself does not seem to be probable. After reaching Panipat, P.W. 7 builds a story that she lived with Krishna for several months. After some time Krishna permitted her to move freely and she came to know from some of the neighbours the name of the trains in which she could travel back home. The missing link in this part of the story is that she does not explain as to how she went to the station at Panipat and by which train she travelled to Delhi. She claims that

she travelled from Panipat to Delhi and from Delhi to Buxar without ticket, which also does not seem probable. The entire narration of the occurrence appears to be absolutely impossible to believe and it is further difficult to believe that Krishna did not try to find out her whereabouts after he found her missing from his home. All these inconsistencies and gaps, in the narration of the prosecution case create several doubts regarding the authenticity of the prosecution version. After reaching Buxar and then to her village home strangely enough she was not produced to be medically examined. In fact her statement was not recorded under Section 164, Cr. P.C. by the police. Therefore, the entire case and story built up by the informant and her daughter P.W. 7 seems to be improbable and unbelievable. Further there can be hardly any explanation for not lodging the First Information Report/Sanha in the police station even when the informant knew very well that her daughter was kidnapped by Mohan Rai, the appellant.

10. According to her Fardbeyan the informant had gone to the house of Anandi Devi when she found her daughter missing and the informant from the very beginning suspected that Mohan Rai was responsible for the alleged kidnapping. Therefore, the second occasion to file a report arose when the informant's husband along with villagers proceeded with Mohan Rai to look for Dharmshila Devi and failed to locate her. This leads this Court to the conclusion that the conduct of the informant in not giving Information to the police is not natural and logical.

11. In the circumstances therefore, it is very difficult to believe that the appellant was responsible for kidnapping the girl and the story of her being kidnapped by Mohan Rai appears to be thoughtfully prepared by an expert mind.

12. The question then would be that there has to be a good reason for the informant to implicate the appellant in a case. The reason comes from the suggestions given to the witnesses P.Ws. 5, 6 and 7 suggesting that there is 111 will and dispute between them because of some land in the village although no case has been filed by the appellant or the informant for the said land. Nevertheless, it does appear that there is a dispute between two which gave rise to the filing of the present First Information Report.

13. Having regard to all the facts discussed aforesaid, I find that I cannot hold the appellant guilty of an offence under Section 366A of the Indian Penal Code. The impugned judgment is set aside and the appellant is directed to be released forthwith if not required in any other case.

The appeal is allowed.

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